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CONTESTED ELECTION

FROM ARKANSAS

BETWEEN

J. P. JOHNSON

AND

A. H. GARLAND.

RESPONSE OF A. H. GARLAND

TO PETITION OF

J. P. JOHNSON.

— . . . —

RICHMOND:

ENQUIRER BOOK AND JOB PRESS.  
TYLER, WISE, ALLEGRE & SMITH.

1862.



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*To the Honorable the Committee of Elections of the House of Representatives of the Congress of the Confederate States of America :*

The petition of Jilson P. Johnson, of Arkansas, now before you, protesting against my right to a seat in Congress as a Representative of the 3d District of Arkansas, and setting forth his claims to the same, and praying for a decision in favor of his claims, demands from me a response, which I now submit to you for your consideration.

It is true there was an election held in said 3d District of Arkansas as said petition states, and the Governor of Arkansas, Henry M. Rector, issued his proclamation on the 10th of December, 1861, and in such proclamation, among other things, it was set forth that I was duly elected a Representative from said District to the Congress of the Confederate States.

On the same day of the issuance of said proclamation, the said Governor, under his signature and official seal, in due form of law, issued to me a certificate of such election, which is now on file with the papers of Congress.

I deny, most emphatically, that the petitioner has shown that the Governor of Arkansas committed any error in proclaiming either the vote of Arkansas County, or the result of the whole vote; and I deny, also, that the pretended papers or evidences submitted by petitioner show any such error, in law or in fact.

From an inspection of the papers accompanying the petition, it does appear that the certificates of Maxwell, as clerk, and Thompson and McDonald, as householders, were made out and sent to the office of the Secretary of State as alleged. And from those papers it seems that two different returns were made out by the clerk of Arkansas County and sent to

the Secretary of State, the first on the 13th of November, 1861, and the other on the 10th of December, 1861. The first return from that County, made out 13th November, 1861, is the one upon which the Governor made his calculation, and upon which, with the returns from the other Counties, the proclamation of the Governor and the certificate of election issued.

Now, beyond this return, I object to the consideration of any other that may be before the committee, and for these reasons :

By the laws of Arkansas, (Gould's Digest, chapter 62, page 472, section 56.) it is provided that within three days after the polls are closed, one of the books shall be sent to the clerk of the County, and the other kept by the judges for the inspection of all persons. Section 58 provides that if the poll-book is not sent in within the time allowed, the clerk of the County shall send a messenger for it, and in that event the polls shall not be compared till the 7th day. Section 60 provides that on the 5th day after the election, *or sooner, if all the returns are in*, the clerk, with two justices of the peace of the County, if they can be conveniently had, and if not, then two householders, shall proceed to open and compare the several election returns which have been made to his office, and make abstracts of the votes given for the several candidates. The returns from Arkansas County, upon which my election was proclaimed, being made out on the 13th of November, came directly within the time named in section 58, but those upon which the petitioner claims his election were not made out until a month and four days after the election, and could not, in any view, have been received by the authorities in estimating the vote. And the returns of the 13th November purport to be full and complete, that is, the vote of the whole county.

Section 71 makes it the duty of the Secretary of State to send a messenger to every County from which returns have not been received for two mails after the same are due. In this case no messenger was sent, as none was needed, the

returns having been made out and sent up regularly and in due time.

By section 73, the Secretary of State, in the presence of the Governor, is required to cast up the votes of the District, within 30 days after the time allowed to make returns, *or sooner*, if all the returns shall have been received; and after casting up the vote, the Governor shall immediately issue his proclamation, and a certificate of election. In this instance, all the returns being received, (*just a month and four days after the election*,) the Governor, after the vote was cast up, issued the proclamation and the certificate exactly, and in strict accordance with the law; and certainly it does appear that this is sufficient to decide the case. The returns from Arkansas County, dated 13th November, are made out and certified by the deputy clerk, who, under the law of Arkansas, has as full power to do this as his principal. (See same Digest, chapter 30, page 248, section 12.)

Again, when the clerk and the two householders made out one set of returns and sent them to the Secretary of State, their duties were discharged, and as to this matter they were, so to speak, *functus officio*, and the law gives them no authority to meet again and make out new returns. Their act in making out another set of returns was a mere voluntary act, and of no higher authority than if any three private citizens had done the same thing. Were this not so, an election would be endless. Admit this can be done, and receive these returns and give the petitioner the seat, and I might return to Arkansas and get another certificate by these gentlemen, and come to Congress and deprive him of his seat, and so it might continue without limit.

And the receiving of these last returns at the office of the Secretary of State was an act of like character, without authority of law.

But on what principle of law or reason can we receive contradictory certificates of clerks to these facts—one to me to-day, and to-morrow an entirely different one to some other person! By this process all the seats in the Congress

may be filled by other persons than those now holding them.—and the rights of society itself completely unsettled.

Moreover, this last certificate of the clerk does not pretend to set forth the particular error complained of. It does not state when, where or how the error was committed, nor when, where and how discovered. In the returns of the 13th November, the mere aggregate vote is given, in the other the vote is pretended to be given by townships, but yet no attempt is made to point out the precise difficulty. So the first certificate is certainly, to say the least of it, of as high grade as the second—is equally in form, and meets the requirements of the law. It cannot be set aside by this other—a mere gratuity, or favor on the part of these gentlemen.

It is plain, then, if there is any difficulty in the returns, after the clerks have sent them to the Governor, it is not for the Governor to go behind the certificate of the clerk; he must take the record as it comes to him; he cannot alter or amend it, but the only way to meet it is to bring the poll-books and the ballots before Congress, and there trace out the error. This jurisdiction rests alone in Congress, and this is the testimony upon which to proceed, upon the familiar principle, that the best evidence of which the case will admit must be furnished; and if you wish to go behind a clerk's certificate and the Governor's proclamation and certificate, to correct a mistake in election returns, this is the only evidence that exists upon which to make the correction. From these the clerk in the first instance makes out his estimate, and if error is committed it is there, and the books and ballots compared, alone will show it. In cases of contested elections, the law of Arkansas provides for the opening of the ballots filed with the clerk (section 59), doubtless to prevent the very thing that is attempted to be done here by clerk's certificates, and certificates of private citizens, to correct errors or mistakes in counting out the votes.

I must protest, upon another strong ground, against this last certificate being received. After the clerk and the

householders had performed their duty and sent up the returns in my favor, which entered into and formed part of my right to the seat in Congress, I was certainly entitled to notice of the time and place of making this recount. It was a matter of some importance to me to know this and be there, or represented, even if they had the authority to do this at all, which I here positively deny. To be confronted by the opponent's witnesses, or to be notified of the time and place of taking proof to affect one's claims, have always, in our country, been regarded as the dearest of his rights, and I know of no good reason why it should be disregarded and ignored in a contest for a seat in a nation's Congress.

When these gentlemen were gravely at work making this recount, I was here at the Capitol trying to do my duty as a member of the Provisional Congress—hundreds of miles distant from the place of their convocation, and was entirely ignorant of the fact, that this great work was going on.

If it is admitted, however, that the certificate relied on by the petitioner be correct and legitimate, it only proves at last that my majority in Arkansas County is only 62 votes instead of 102, as set forth in the count of the votes on the 13th November. There are twelve other Counties in the District, and from all of them returns were received and calculated. While this pretended error may have occurred in Arkansas County, others of the same kind may have taken place in other Counties as against me. If the vote of Arkansas County be not as the Governor proclaimed it, may not all or some of the others be misstated? And while the petitioner rejects one part of the proclamation, he seems to rely upon it, and make it the basis of his claim here, in all others! If the question of errors and mistakes in the votes of the Counties be an open one, I simply request the privilege of examining and comparing the votes of the other counties to ascertain who is really elected. It may be, as there were some seven candidates, that neither the petitioner or myself is elected! This is strongly impressed upon my mind, as a very intelligent and highly respectable citizen of



Union County, Arkansas, in a letter of the 23d ultimo informed me that I had received six more votes in that county than the returns gave me, *and this could be proved by the poll-books*. This letter I have, and am ready at any time to produce it before the committee. And I must ask the right to have the necessary examination and proof taken in the cause to establish the true state of the case throughout the District—if the committee determine there is showing enough to justify an enquiry into the matter at all. This is due to those who claim rights here, to the people of the District, as well as the whole State of Arkansas.

However, the most interesting feature of this remarkably interesting case is this. On the 7th of December, 1861, the clerk of Arkansas County makes out another abstract of the vote, by townships, and certifies to it, and sends it to the Governor of Arkansas, to take the place of the first one made out, dated November 13th, 1861. In this return of the 7th of December, (which, for the sake of designation, let us call it, the *intermediate return*,) the petitioner received 98 votes, and myself 86 votes, which reduces my majority from the first count 14 votes, but still leaves me elected by 18 votes. This certificate is from the same clerk, and prior in time to the one relied on by the petitioner, and is, beyond question, entitled to as much consideration, and is herewith presented, marked X, and asked to be received as part of this response; it is authenticated in the same manner as the papers of the petitioner are. His papers are no evidence, nor is this one alluded to—but if his are, this is—and the result is, I am elected at last, “the best two in three,” which, the world over, is considered decisive and conclusive. If the committee will consider his papers, I request a kind consideration of this one, which then must leave the official acts of the Governor to decide the case. In other words, the very contradiction of these papers must throw such doubts over the matter as to leave it to be determined by the certificate—which is the highest and best evidence of the legal right, not to be set aside on mere

doubt, but only in cases of clear mistake or fraud, and those cases clearly and fully made out. All official acts have the benefit of the presumption that they are done rightly, and when they are impeached for fraud or mistake, the particular fraud or mistake must be distinctly pointed out and distinctly proved.

Then, briefly, the petitioner's evidence is not admissible for any purpose. If admissible, it proves nothing and does not meet the case.

And, if admissible, I offer evidence of the same dignity which contradicts it directly; and with this contradiction in the case, the certificate of the Governor properly and regularly issued under the law as recited, must be received as conclusive.

I beg pardon for saying so much, but I could not well say less. I crave the earnest attention of the committee to the points suggested, and hope they may aid the committee in coming to some just conclusion in the premises.

Respectfully,

A. H. GARLAND.

RICHMOND, February 20th, 1862.

A list of votes given on the 6th day of November, 1861, in Arkansas County, Ark., for Congress.

[Here follows the vote by townships.]

STATE OF ARKANSAS, COUNTY OF ARKANSAS:

I, JOSEPH H. MAXWELL, Clerk of the Circuit Court, and *ex officio* Clerk of the County Court in and for the County aforesaid, do hereby certify that I have examined the poll-books of the Congressional election, held in said County on the 6th day of November, 1861, and that the above and foregoing abstract is a full and correct list, and that I found that A. H. Garland received 186 votes; J. P. Johnson received 98 votes; S. F. Arnett received 5 votes; J. C. Murray received 91 votes; Harley, 10 votes; Grace, 4, and James I.

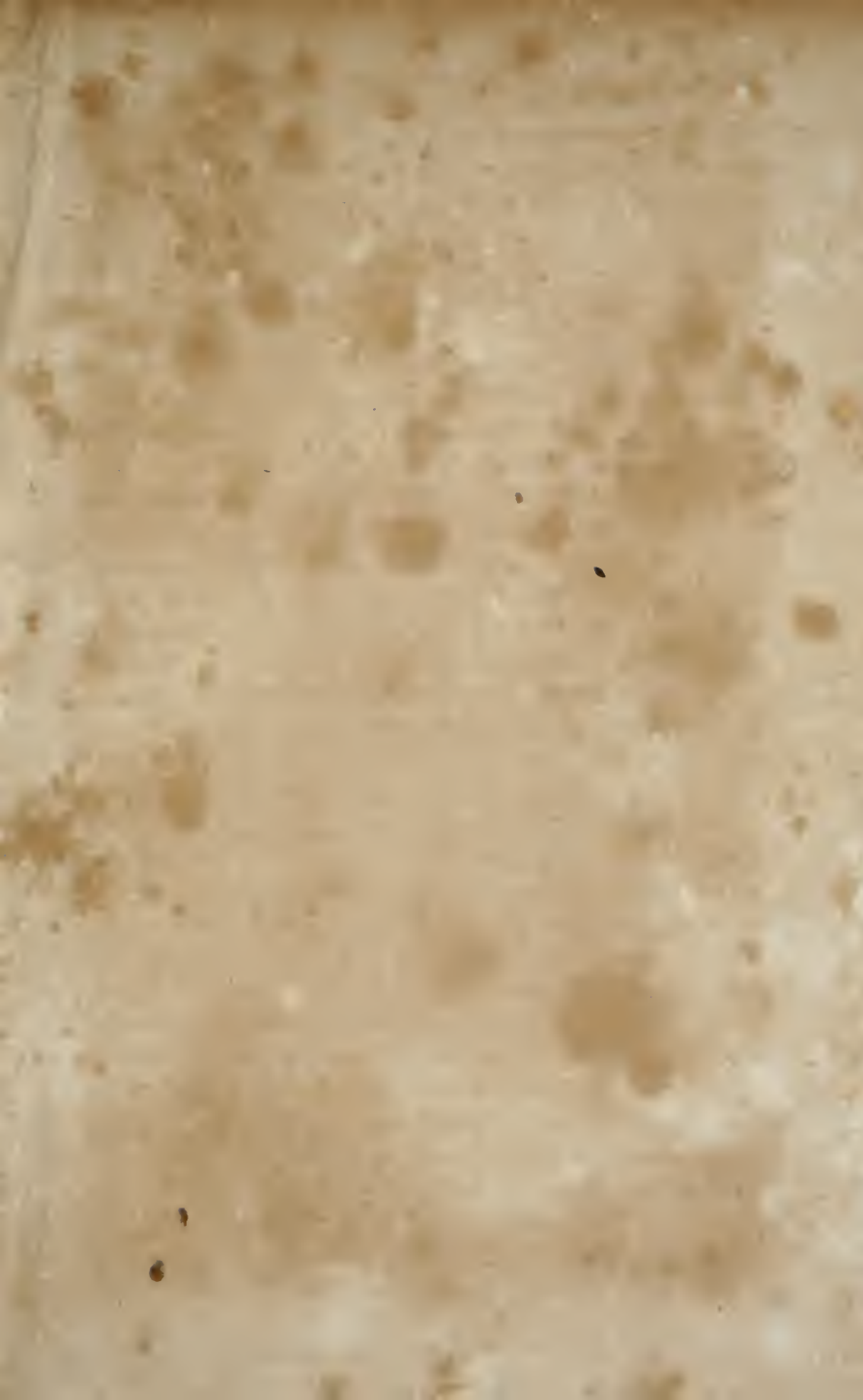
In testimony whereof I hereunto set my hand

{ SEAL. } and affix the seal of my office the 7th December,  
1861.

Signed,

JOSEPH H. MAXWELL, *Clerk.*

Here follow the certificate of the Secretary of State, &c., that these returns were received, &c., &c.





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